

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 5 PETROLEUM STORAGE TANKS
PART 1 GENERAL PROVISIONS

20.5.1.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
[20.5.1.1 NMAC - Rp, 20.5.1.1 NMAC, 6/15/2009]

20.5.1.2 SCOPE:

- A. This part applies to 20.5.1 through 20.5.19 NMAC.
- B. Any UST system holding hazardous wastes that are listed or identified under Subtitle C of the federal Resource Conservation and Recovery Act, or a mixture of such hazardous waste and other hazardous regulated substances, is excluded from these regulations. This subsection does not apply to any UST system containing petroleum.
- C. The following types of storage tank systems are excluded from the requirements of 20.5.2 through 20.5.19 NMAC:
 - (1) any wastewater treatment tank systems and any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the federal Clean Water Act;
 - (2) equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
 - (3) any UST system with a capacity of 110 gallons or less or any AST system with a capacity of 1,320 gallons or less, or any AST system with a capacity of 55,000 gallons or more;
 - (4) any UST system that contains a de minimis concentration of regulated substances;
 - (5) any emergency spill or overflow containment UST system that is expeditiously emptied after use;
 - (6) any storage tank systems containing radioactive material that are regulated under the Atomic Energy Act of 1954;
 - (7) any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 CFR part 50 appendix A;
 - (8) airport hydrant fuel distribution systems; and
 - (9) UST systems with field-constructed tanks.
- D. Notwithstanding the foregoing exclusions, no person may install a storage tank system listed in Subsection C of this section for the purpose of storing regulated substances unless such storage tank system (whether of single or double-walled construction):
 - (1) will prevent releases due to corrosion or structural failure for the operational life of the tank; and
 - (2) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material or designed in a manner to prevent the release or threatened release of any stored substance; and
 - (3) the material used in the construction or lining of the tank is compatible with the substance to be stored.
- E. Parts 20.5.4 through 20.5.9 NMAC shall not apply to an existing AST or UST system which has never contained a regulated substance until the system is placed in service.
[20.5.1.2 NMAC - Rp, 20.5.1.2 NMAC, 6/15/2009; A, 3/17/2012]

20.5.1.3 STATUTORY AUTHORITY: Parts 20.5.1 through 20.5.19 NMAC are promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.
[20.5.1.3 NMAC - Rp, 20.5.1.3 NMAC, 6/15/2009; A, 3/17/2012]

20.5.1.4 DURATION: Permanent.
[20.5.1.4 NMAC - Rp, 20.5.1.4 NMAC, 6/15/2009]

20.5.1.5 EFFECTIVE DATE: June 15, 2009, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.1.5 NMAC - Rp, 20.5.1.5 NMAC, 6/15/2009]

20.5.1.6 OBJECTIVE: The purpose of this part is to provide definitions for use in 20.5.1 through 20.5.19 NMAC.

[20.5.1.6 NMAC - Rp, 20.5.1.6 NMAC, 6/15/2009; A, 3/17/2012]

20.5.1.7 DEFINITIONS:

A. Terms beginning with numerals or the letter "A", and abbreviations for units.

(1) "Above ground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above ground portion of an underground storage tank system and releases associated with overfills and transfer operations during regulated substance deliveries to or dispensing from an UST system.

(2) "Above ground storage tank" or "AST" means a single tank or combination of manifolded tanks, including pipes connected thereto, that is 1,320 gallons or more, and less than 55,000 gallons, is permanently installed, and is used to contain petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of 60 degrees fahrenheit and fourteen and seven tenths pounds per square inch absolute, and the volume of which is more than ninety percent above the surface of the ground. Tanks in vaults and special enclosures are ASTs. A compartment tank with combined total capacity greater than 1,320 gallons and less than 55,000 gallons is an AST and for purposes of these regulations is considered to be one tank regardless of the number of compartments and the number of regulated substances contained. Above ground storage tank does not include (regardless of size) any:

(a) farm, ranch or residential tank used for storing motor fuel for noncommercial purposes;

(b) pipeline facility, including gathering lines regulated under the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979, or that is an intrastate pipeline facility regulated under state laws comparable to either act;

(c) surface impoundment, pit, pond or lagoon;

(d) storm water or wastewater collection system;

(e) flow-through process tank;

(f) liquid trap, tank or associated gathering lines or other storage methods or devices related to oil, gas or mining exploration, production, transportation, refining, processing or storage, or ~~the~~ to oil field service industry operations;

(g) tank used for storing heating oil for consumptive use on the premises where stored;

(h) tanks, bulk terminals, or related pipelines and facilities owned or used by a refinery, natural gas processing plant or pipeline company in the regular course of their refining, processing or pipeline business; bulk plants are not included in the exemption;

(i) multiple tanks at a facility, that are individually less than 1,320 gallons, unless tanks that are siphoned together have a cumulative total capacity greater than 1,320 gallons;

(j) pipes connected to any tank exempted by Subparagraphs (a) through (i) of this paragraph.

(3) "Accidental release" means any sudden or non-sudden release neither expected nor intended by the tank owner or operator of petroleum or other regulated substance from a storage tank that results in a need for corrective action or compensation for bodily injury or property damage.

(4) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps associated with a storage tank.

(5) "Applicable standards" means the most relevant target concentrations that legally apply to a site.

(6) "AST system" means an above ground storage tank and its associated ancillary equipment and containment system, if any.

B. Terms beginning with the letter "B".

(1) "Basin sump" means a liquid-tight collection container with no valves, joints or other penetrations.

(2) "Below ground release" means any release to the subsurface of the land or to groundwater. This includes, but is not limited to, releases from the below ground portions of a storage tank system and releases associated with overfills and transfer operations as the regulated substance is delivered to or dispensed from a storage tank.

(3) "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with materials so that physical inspection is precluded.

(4) "Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

(5) "Bulk plant" means a facility which is not a bulk terminal, and which is used for the temporary storage of petroleum products prior to delivery to gasoline stations, convenience stores, and commercial accounts, which is smaller than a bulk terminal and is not equipped with any processing equipment.

(6) "Bulk terminal" means a large facility for storing and handling petroleum products that receives and stores bulk deliveries of gasoline and other products from a pipeline, barges, or directly from a nearby refinery. Equipment at the terminal facility is usually capable of further processing the product, including but not limited to: injection of additives or conversion of gasoline vapors received from transports after making deliveries using stage one vapor recovery back to liquid form.

(7) "Bureau" means the New Mexico petroleum storage tank bureau.

C. Terms beginning with the letter "C".

(1) "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell through the application of either galvanic anodes or impressed current.

(2) "Certified installer" refers generally to both AST and UST certified installers.

(3) "Certified installer-AST" means an individual who has been certified by the department under 20.5.14 NMAC to install, replace, repair and modify AST systems in this state.

(4) "Certified installer-UST" means an individual who has been certified by the department under 20.5.14 NMAC to install, replace, repair, and modify UST systems in this state.

(5) "Certified operator" means a class A, B, or C operator trained and certified according to the requirements of 20.5.18 NMAC.

(6) "Change in service" means removing a regulated substance from a storage tank system and placing something in the system that is not a regulated substance.

(7) "Chief financial officer," in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

(8) "Community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(9) "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for extended periods of time and under varied environmental conditions (i.e., at different temperatures).

(10) "Connected piping" means all above ground and underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual storage tank system, the piping which joins the two storage tank systems should be allocated equally between them.

(11) "Consumptive use" with respect to heating oil means the oil is burned on the premises.

(12) "Contain" means the stopping of further migration of a regulated substance from a release into or through groundwater, surface water or soil.

(13) "Containment" means that contamination from a release has been contained and is not spreading, migrating, spilling, infiltrating or otherwise traveling into uncontaminated areas. Verification of containment requires the performance of physical measurements that provide positive proof that contamination is contained.

(14) "Containment sump" means a liquid-tight collection container, which may have valves, joints or penetrations, such as piping penetrations.

(15) "Contaminant" means any regulated substance as defined in this section, any constituent of a regulated substance, or any combination of a regulated substance or constituent thereof with any other substance or matter.

(16) "Contaminant of concern" means any contaminant which is suspected of being released at the site based on site history for which:

(a) the New Mexico water quality control commission has adopted standards pursuant to the Water Quality Act, Sections 74-6-1- through 74-6-17 NMSA 1978;

(b) the New Mexico environmental improvement board has adopted standards, action levels, risk-based screening levels or site specific target levels pursuant to the Hazardous Waste Act, the Ground Water Protection Act, or the Environmental Improvement Act; or

(c) the New Mexico environment department has established or approved site-specific target levels pursuant to the Hazardous Waste Act, the Ground Water Protection Act, or the Environmental Improvement Act.

(17) "Contaminant saturated soil" means soil exclusive of the water table and capillary fringe in which non-aqueous phase liquid is observable in the soil or, if sufficiently liquid, drains from the soil when the soil is suspended on filter paper or its equivalent.

(18) "Contaminated soil" means soil containing detectable quantities of contaminants of concern.

(19) "Contractor" means a person who has an agreement to perform corrective action on behalf of the state or owners or operators.

(20) "Controlling interest" means direct ownership or other legal control of at least fifty percent of the voting stock of another entity.

(21) "Corrective action" means an action taken to investigate, minimize, eliminate, or clean up a release to protect the public health, safety, and welfare or the environment.

(22) "Corrective action fund" or "fund" means the fund created pursuant to the Ground Water Protection Act, Section 74-6B-7 NMSA 1978, to pay or reimburse for corrective action performed pursuant to 20.5 NMAC and the Ground Water Protection Act.

(23) "Corrosion protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell through the application of either galvanic anodes or impressed current, or by isolating the metal surface from soil, water, or other elements that can cause corrosion, including but not limited to application of a paint or coating material approved for use as corrosion protection.

(24) "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the national association of corrosion engineers international (NACE). A corrosion expert shall only perform the specific activities required by these rules for which he is qualified, certified, registered or licensed; for example, a NACE licensed cathodic protection tester shall not design a cathodic protection system unless he is also a NACE licensed cathodic protection technologist, specialist or has another equivalent qualification, certification, registration or license.

(25) "Corrosion prevention plan" means a plan approved in writing by a corrosion expert for a UST or AST or associated piping, or secondary containment, which plan is designed to maintain the integrity of the tank or piping for its useful life.

(26) "Critical junctures" means the steps of an installation, replacement, modification, repair or removal of a tank system or any part of a tank system, which are important to the prevention of releases and which are more specifically described in 20.5.5 and 20.5.8 NMAC.

D. Terms beginning with the letter "D".

(1) "Deductible" means the first ten thousand dollars (\$10,000) of minimum site assessment costs, or any lesser amount determined in accordance with 20.5.17.20 NMAC.

(2) "Department" means the New Mexico environment department, also known as the New Mexico department of environment.

(3) "Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate storage tank systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of storage tank systems, such as tank from piping.

(4) "Director" means the director of the environmental protection division of the department.

(5) "Direct responsible supervisory control" means responsibility for the direction, control, or supervision of investigation and remediation activities to assure that the work is performed in accordance with appropriate industry and regulatory quality standards.

E. Terms beginning with the letter "E".

(1) "Effectively mitigating" means that the approach taken to corrective action has contained the release and is achieving reductions in contamination levels such that the standards described in 20.5.12 and 20.5.13 NMAC will be met in a manner protective of public health, safety and welfare and the environment, within the period of time specified in the plan for remediation by monitored natural attenuation or otherwise.

(2) "EIB" means the environmental improvement board.

(3) "EIB standards" means standards set forth in 20.5.12, 20.5.13 and 20.7.10 NMAC.

(4) "Electrical equipment" means equipment which contains dielectric fluid which is necessary for the operation of equipment such as transformers and buried electrical cable.

(5) "Emergency generator system" means any UST or AST system that stores any regulated substance solely for use by emergency power generators.

(6) "Emergency repair" means a repair required by immediate danger of a release, or by an immediate threat to public health, safety and welfare, or to the environment.

(7) "Environmental improvement board" (EIB) means the board created in the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

(8) "Environmental Improvement Act" means the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

(9) "Excavation zone" means the area containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

(10) "Existing AST system" means an AST system which is used to contain an accumulation of regulated substances or for which installation commenced on or before June 14, 2002. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction at the site or installation of the tank system, and if either:

(a) a continuous on-site physical construction or installation program has begun, or

(b) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(11) "Existing UST system" means a UST system which is used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction of the site or installation of the tank system, and if either:

(a) a continuous on-site physical construction or installation program has begun, or

(b) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(12) "Exposed petroleum products" means petroleum that is present in the non-aqueous phase (i.e. not dissolved in water) on the surface of the ground, on surface water, or in any surface or subsurface structures such as utility corridors, basements and manholes.

(13) "Exposed hazardous substance" means a regulated substance other than petroleum that is present on the surface of the ground, on surface water, or in any surface or subsurface structures such as utility corridors, basements or manholes.

F. Terms beginning with the letter "F".

(1) "Facility" means a property location that contains storage tanks.

(2) "Farm tank" is a tank located on a tract of land devoted to the production of crops, or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, range land and nurseries with growing operations.

(3) "Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:

(a) a 10-K report submitted to the SEC;

(b) an annual report of tangible net worth submitted to Dun and Bradstreet; or

(c) annual reports submitted to the energy information administration or the rural electrification administration; "financial reporting year" may thus comprise a fiscal or a calendar year period.

(4) "Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(5) "Functionality test" means a test for automatic line leak detectors which determines whether they are operating correctly.

(6) "Fund" means the corrective action fund which was created pursuant to Section 74-6B-7 NMSA 1978, to pay or reimburse for corrective action required at leaking storage tank sites.

G. Terms beginning with the letter "G".

(1) "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

(2) "Ground Water Protection Act" means the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978.

H. Terms beginning with the letter "H".

(1) "Hazardous substance UST system" or "hazardous substance UST" means an underground storage tank system that contains an accumulation of hazardous substances defined in Section 101(14) of the federal

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act (RCRA). Hazardous substance UST includes a tank with a mixture of such substances and petroleum, but which is not a petroleum UST system.

(2) "Hazardous Waste Act" means the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978.

(3) "Heating oil" refers to a type of fuel oil that is one of eight technical grades. These grades are: No. 1; No. 2; No. 4--light; No. 4--heavy; No. 5-light; No. 5-heavy; No. 6; and residual. Heating oil also refers to fuel oil substitutes such as kerosene or diesel when used for heating purposes.

(4) "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

I. Terms beginning with the letter "I".

(1) "Imminent threat to public health and the environment" means a condition that creates a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the actual or potential damages to public health and the environment.

(2) "Incurred" means billed to the owner or operator.

(3) "Initiation of containment" means the point in time at which a system designed to achieve containment is put into continuous operation.

(4) "Install" or "installation" means the work involved in placing a storage tank system or any part thereof in, on or above the ground and preparing it to be placed in service.

(5) "Installation of a new or replaced motor fuel dispenser system" means the installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the storage tank system, but shall not mean the installation of a motor fuel dispenser installed separately from the equipment needed to connect the dispenser to the storage tank system. The equipment necessary to connect the motor fuel dispenser to the storage tank system may include check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the underground piping.

(6) "Integrity test" means an evaluation process that has been independently tested and approved by a nationally recognized association or independent testing laboratory to determine, in the case of a UST, the suitability of the tank for continuous containment of a regulated substance, or, in the case of an AST, both the suitability of the tank for continuous containment of a regulated substance and the necessary hydraulic properties of the tank to contain the outward pressure of the regulated substance.

(7) "Internal inspection" means a formal inspection of an AST by an inspector authorized by the American petroleum institute or certified by the steel tank institute. The inspection shall determine whether the AST tank bottom or shell is severely corroded and leaking, and shall include an evaluation of the tank bottom and shell thickness to see whether they meet minimum thickness requirements. The inspector shall visually examine all tanks included in the inspection and, if applicable, check for tank bottom settlement.

(8) "Interstitial monitoring" is a leak detection method which surveys the space between a storage tank system's walls and the secondary containment system for a change in steady state conditions.

(9) "Inventory controls" are techniques used to identify a loss of product that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

J. Terms beginning with the letter "J". [RESERVED]

K. Terms beginning with the letter "K". [RESERVED]

L. Terms beginning with the letter "L".

(1) "Landfarming" is the remediation of petroleum contaminated soils on or at ground surface using natural aeration and volatilization, disking and natural and enhanced bioremediation to reduce the concentrations of petroleum hydrocarbons to regulatory levels; requires a groundwater discharge permit.

(2) "Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

(a) by EPA or a state to require corrective action or to recover the costs of corrective action;

(b) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(c) by any person to enforce the terms of a financial assurance mechanism.

(3) "Liquid" means any material that has a fluidity greater than that of 300 penetration asphalt when tested in accordance with ASTM D 5, test for penetration for bituminous materials. When not otherwise identified, the term liquid shall mean both flammable and combustible liquids.

(4) "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. Such liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

(5) "Loading rack" means the area around and including loading arms, pumps, meters, shutoff valves, relief valves, and other equipment used to load and unload fuel cargo tanks, trucks, tank trucks, railroad cars, cars, other distribution containers or other transport vehicles, if the loading rack services or is attached to one or more storage tank(s) regulated in 20.5 NMAC.

(6) "Local government" shall have the meaning given this term by applicable state law. The term is generally intended to include counties, municipalities, school districts, and special districts, including flood control and conservancy districts.

(7) "Lower explosive limit" means the lowest percentage of a substance in an airspace that is explosive.

(8) "LST ranking system" means the leaking storage tank ranking system, the ranking or site prioritization system developed for and modified by the department using the analytical hierarchy process to rank sites where a release from a storage tank has occurred based upon public health, safety and welfare and environmental concerns.

M. Terms beginning with the letter "M".

(1) "Magnitude of contamination" means the maximum concentrations of contaminants of concern that resulted from a release.

(2) "Minimum site assessment" or "MSA" means the sum total of all of the following activities:

- (a) reporting, investigating and confirming a release pursuant to 20.5.7 NMAC; and
- (b) determining the on-site extent, magnitude and impact of contamination by conducting investigations and reporting to the department pursuant to 20.5.12.11 NMAC or 20.5.13.10 NMAC (initial abatement), 20.5.12.12 NMAC or 20.5.13.11 NMAC (report on initial abatement), 20.5.12.16 NMAC or 20.5.13.15 NMAC (preliminary investigation), and 20.5.12.18 NMAC or 20.5.13.17 NMAC (report on the preliminary investigation).

(3) "Mobile AST" means an above ground storage tank that is not field-erected, and which is capable of changes in location.

(4) "Modification" means any change to any portion of a storage tank system that is not a repair. For purposes of 20.5.14 NMAC, the term does not include the process of relining a tank through the application of such materials as epoxy resins.

(5) "Monitored natural attenuation" means a methodology for remediation that relies upon a variety of naturally occurring chemical, physical and biological processes to achieve target concentrations in a manner that is equally as protective of public health, safety and welfare, and the environment as other methods, and that is accompanied by a program of monitoring to document the progress and results of the above mentioned processes.

(6) "Monthly" means once per month, not to exceed 35 days.

(7) "Motor fuel" is a petroleum-based fuel used in the operation of an engine that propels a vehicle for transportation of people or cargo.

(8) "Motor fuel dispenser system" or "dispenser system" means a motor fuel dispenser and the equipment necessary to connect the dispenser to a storage tank system. The equipment necessary to connect the motor fuel dispenser to the storage tank may include check valves, shear valves, unburied risers of flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the piping.

N. Terms beginning with the letter "N".

(1) "NAPL" means non-aqueous phase liquid as defined in this section.

(2) "New AST system" means an AST system for which installation has commenced after June 14, 2002. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction at the site or installation of the tank, and if either (a) a continuous on-site physical construction or installation program has begun, or (b) the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(3) "New storage tank system" means a new AST system or a new UST system.

(4) "New UST tank system" means an UST system for which installation has commenced after December 22, 1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals, or permits necessary to begin physical construction at the site or installation of the tank, and if either:

(a) a continuous on-site physical construction or installation program has begun, or
(b) the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(5) "Non-aqueous phase liquid" (NAPL) means an interstitial body of liquid oil, petroleum product or organic solvent or other organic substance, including an emulsion containing such material; in the case of liquid oil or a petroleum product, the term is synonymous with "phase separated hydrocarbon" and "free product."

(6) "Non-commercial purposes" with respect to motor fuel means not for resale.

(7) "Non-community water system" means a public water system that is not a community water system.

(8) "Normal maintenance" means an activity involving work on a storage tank system that is not a repair, replacement, or installation, which may include but is not limited to: painting, replacing fuses, or touchup. Any time an activity involves disconnecting or affecting the integrity of the piping, tank, spill or overfill systems, or work on line or tank leak detection systems, then the activity is not normal maintenance but is instead a repair.

O. Terms beginning with the letter "O".

(1) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from a storage tank. This definition is intended to assist in the understanding of 20.5.9 NMAC and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

(2) "On the premises where stored" with respect to heating oil means storage tank systems located on the same property where the stored heating oil is used.

(3) "Operational life" is the period beginning from the time when the installation of the tank system is commenced until it is properly closed pursuant to 20.5.8 NMAC.

(4) "Operator" means any person in control of, or having responsibility for, the daily operation of a storage tank system.

(5) "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(6) "Owner" means, in the case of a storage tank in use on November 8, 1984 or brought into use after that date, any person who owns a storage tank used for storage, use, or dispensing of regulated substances; and in the case of a storage tank in use before November 8, 1984 but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use. For purposes of the registration requirements of 20.5.2 NMAC only, the term "owner" excludes any person who:

(a) had a UST taken out of operation on or before January 1, 1974;

(b) had a UST taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984; or

(c) had an AST taken out of operation on or before July 1, 2001.

P. Terms beginning with the letter "P".

(1) "Permanently installed AST" means an AST that is on site for more than 365 consecutive days and dispensing or storing a regulated substance for distribution at any time during that period.

(2) "Person" means any individual, trust, firm, joint stock company, federal agency, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" includes a consortium, a joint venture, a commercial entity, and the United States government.

(3) "Petroleum" means crude oil, crude oil fractions, and refined petroleum fractions, including gasoline, kerosene, heating oils, and diesel fuels.

(4) "Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(5) "Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with storage tank systems as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(6) "Petroleum tank system," "petroleum storage tank" or "petroleum UST" means a storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(7) "Pipeline facilities, including gathering lines," are new and existing pipe rights-of-way and any equipment, facilities, or buildings regulated under the federal Natural Gas Pipeline Safety Act of 1968, 49 U.S.C.

App. 1671, et seq., or the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. 2001, et seq., or which is an intrastate pipeline facility regulated under state laws comparable to either act.

(8) "Piping" means the hollow cylinder or the tubular conduit constructed of non-earthen materials that routinely contains and conveys regulated substances within a storage tank system. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the storage tank to the dispenser or other end-use equipment.

(9) "Positive sampling, testing or monitoring results" refers to the results of sampling, testing or monitoring using a method described in 20.5.6 NMAC that indicate a release from a storage tank system has occurred.

(10) "Potable drinking water well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which may supply water for a community water system, a non-community public water system, or otherwise may supply water for human consumption (consisting of drinking, bathing, cooking, or other similar uses). Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

(11) "Potentially explosive levels of petroleum hydrocarbon vapors" means vapors which register in excess of 10 percent LEL (lower explosive limit) on a combustible gas indicator properly calibrated for pentane.

(12) "Potentially harmful petroleum hydrocarbon vapors" means vapors which register a reading of five whole units above ambient concentrations total aromatic hydrocarbons in any structure in the vicinity of the release site, on a photoionization detector, flame ionization detector or an equivalent device properly calibrated to detect hydrocarbon vapors at a minimum detection limit of at least one ppm.

(13) "Product" means a regulated substance.

(14) "Product deliverer" means any person who delivers or deposits product into a storage tank system. This term includes, but is not limited to, major oil companies, jobbers, petroleum transportation companies, brokers and other product delivery entities.

(15) "Professional engineer" is an individual licensed in New Mexico to engage in the practice of engineering under the New Mexico Engineering and Surveying Practices Act, Sections 61-23-1 through 61-23-32 NMSA 1978.

(16) "Project drawings" means schematic drawings of tanks, piping, and ancillary equipment, which need not be prepared, stamped or signed by a professional engineer.

(17) "Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

(18) "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of a storage tank system through one of the mechanisms listed in 20.5.9.905 through 20.5.9.916 NMAC, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

(19) "Public water system" means a system for the provision to the public of piped water for human consumption (consisting of drinking, bathing, cooking, or other similar uses) if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system is either a "community water system" or a "non-community water system."

Q. Terms beginning with the letter "Q".

"Qualified firm" means a person, as defined in this section, qualified by the department under 20.5.16 NMAC to undertake corrective action.

R. Terms beginning with the letter "R".

(1) "RBSL" means risk-based screening level as used in 20.5.12 NMAC.

(2) "Receptor" means a person, plant or animal community, structure, utility, surface water, designated wellhead or source water protection area or water supply well that is or may be adversely affected by a release.

(3) "Red tag" means a tamper-resistant tag on a storage tank system's fill pipes that clearly identifies a storage tank system as ineligible for product delivery, deposit or acceptance. The tag shall be easily visible and state that it is unlawful to deliver to, deposit into, or accept product into, the ineligible storage tank system.

(4) "Regulated substance" means:

(a) for USTs: any substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act, as amended; and

(b) for ASTs and USTs: petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure of 60 degrees fahrenheit and fourteen and seven tenths pounds per square inch absolute; asphalt is not a regulated substance; the term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels (including ethanol-based motor fuels), jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(5) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of a regulated substance from a storage tank system into groundwater, surface water or soil.

(6) "Release detection" means determining whether a release of a regulated substance has occurred from a storage tank system into the environment or into the interstitial area between a storage tank system and a secondary barrier around it.

(7) "Remediation" is the process of reducing the concentration of contaminants in air, water or soil to a level that poses an acceptable risk to public health, safety and welfare and the environment.

(8) "Repair" means to restore any defective or damaged part of a storage tank system. Repair does not include normal maintenance. For these purposes, normal maintenance shall include but is not limited to: painting, replacing fuses, or touchup. Any time an activity involves disconnecting or affecting the integrity of the piping, tank, spill or overfill systems, or work on line or tank leak detection systems, then the activity is not normal maintenance and is a repair.

(9) "Replace" means:

(a) for a storage tank or dispenser system, to remove an existing tank or dispenser system and install a new tank or dispenser; and

(b) for piping, to remove and put back in any amount of piping connected to a single tank that is installed after April 4, 2008 or to a single tank that is replaced after April 4, 2008; replacing piping also means removing five or more feet of piping and installing new piping within 30 days.

(10) "Residential tank" is a tank located on property used primarily for dwelling purposes.

(11) "Responsible party-lead site" means a site where the owner or operator takes corrective action and applies to the fund for payment of corrective action costs, as distinct from a site where the state takes corrective action.

(12) "Return to service" means to bring a storage tank into operation after the tank has been in temporary or permanent closure.

(13) "Risk-based screening level" (RBSL) means an action level or target level for a contaminant of concern determined using default criteria set by the department and site specific data for thickness of the contaminated zone and depth to groundwater in the tier one evaluation in accordance with 20.5.12 NMAC.

(14) "Rural and remote area" means that a storage tank facility is located in an area that is more than 20 miles from another facility that sells fuel to the public and that is open year round.

S. Terms beginning with the letter "S".

(1) "Secondary containment" means a release prevention and release detection system for a storage tank, its piping and associated ancillary equipment that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, synthetic impervious liners.

(2) "Secretary" means the secretary of the New Mexico environment department also known as the secretary of the environment.

(3) "Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

(4) "Site" means a place where there is or was at a previous time one or more storage tanks and may include areas contiguous to the actual location or previous location of the tanks.

(5) "Site conceptual exposure scenario" means a qualitative evaluation of exposure information for a site that identifies the relevant contaminant source, release mechanisms, media of concern, complete and incomplete exposure pathways, and receptors.

(6) "Site-specific target level" (SSTL) means an action level or target level for a contaminant of concern determined using more site-specific data than the tier one evaluation in the tier two or tier three evaluations in 20.5.12 NMAC.

(7) "Source water" means water that could be used for domestic purposes, including but not limited to ground water, natural springs, and surface water, even if such water is not current being used for domestic purposes.

(8) "Special enclosure" means an above or below grade AST installation that surrounds an AST or ASTs, including but not limited to pits, cellars, and basements.

(9) "Spill" means:

(a) any spill or overfill of a regulated substance that exceeds its reportable quantity under CERCLA (40 CFR 302);

(b) any spill or overfill of petroleum that exceeds 25 gallons or causes a sheen on surface water or reaches groundwater; or

(c) any spill or overfill of petroleum of 25 gallons or less the clean up of which cannot be accomplished within 24 hours.

(10) "SSTL" means site-specific target level as used in 20.5.12 NMAC.

(11) "State-lead site" means a site where the department takes corrective action using the fund because the owners and operators are unknown, unable or unwilling to take corrective action as described in 20.5.15.10 NMAC or because the department determines that a single entity is necessary to lead the corrective action.

(12) "Storage tank" means any above ground storage tank or underground storage tank.

(13) "Storage tank fee" means fees required by Section 74-4-4.4 NMSA 1978 and Section 74-6B-9 NMSA 1978.

(14) "Storage tank system" means a storage tank and its associated ancillary equipment and containment system, if any.

(15) "Stormwater or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur.

(16) "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

(17) "Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of a storage tank release such as coterminous boundaries, overlapping constituencies, common ground-water aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

(18) "Sump" means any pit or reservoir that meets the definition of tank (including troughs or trenches connected to it that serves to temporarily collect regulated substances.

(19) "Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of regulated substances and that is not an injection well.

T. Terms beginning with the letter "T".

(1) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

(2) "Tank" is a stationary device designed to contain an accumulation of regulated substances which is constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

(3) "Target concentrations" means any concentration of a contaminant to which a medium is required to be remediated under any provision of 20.5 NMAC protective of human health, safety and welfare, and the environment. For purposes of 20.5.13 NMAC, target concentrations as they apply to soil contamination shall be based on standards prescribed by applicable law or, if there are no applicable standards, the standard set forth in 20.6.3.110 NMAC.

(4) "Termination" under Subsections A and B of 20.5.9.957 NMAC means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

(5) "Tightness testing" means a procedure for testing the ability of a tank system to prevent an inadvertent release of any stored substance into the environment (or, in the case of an UST system, intrusion of groundwater into a tank system).

U. Terms beginning with the letter "U".

(1) "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

(2) "Underground release" means any below ground release.

(3) "Underground storage tank" or "UST" means a single tank or combination of tanks, including pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. A compartment tank with combined total capacity greater than 110 gallons is a UST and for purposes of these regulations is considered to be one tank regardless of the number of compartments and the number of regulated substances contained. The term does not include any:

(a) farm, ranch or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) septic tank;

(c) pipeline facility, including gathering lines which are regulated under the federal Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. 1671, et seq., or the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. 2001, et seq., or which is an intrastate pipeline facility regulated under state laws comparable to either act;

(d) surface impoundment, pit, pond or lagoon;

(e) storm water or wastewater collection system;

(f) flow-through process tank;

(g) liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

(h) storage tank situated in an underground area, such as a basement, cellar, mineworking drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the undesignated floor;

(i) tank used for storing heating oil for consumptive use on the premises where stored;

(j) tank exempted by rule of the EIB after finding that the type of tank is adequately regulated under another federal or state law; or

(k) pipes connected to any tank exempted by Subparagraphs (a) through (j) of this paragraph.

(4) "Un-manned facility" means a storage tank system without a sales office, store or other business establishment associated with it. Examples of un-manned facilities include but are not limited to: a card-lock fueling station with no attendant and a tank serving an emergency generator at a utility transfer station.

(5) "Unsaturated zone" is the subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary forces within the soil and containing air or gases generally under atmospheric pressure. This zone is limited above by the ground surface and below by the upper surface of the zone of saturation (i.e., the water table).

(6) "USTR" means the version of the environmental improvement board's underground storage tank regulations in effect prior to adoption of the standard format in the New Mexico Administrative Code in 1995.

(7) "UST system" means an underground storage tank and its associated ancillary equipment and containment system, if any.

V. Terms beginning with the letter "V".

"Vault" means a liquid-tight structure that completely surrounds a tank that is above, below or partially above or below the ground surface.

W. Terms beginning with the letter "W".

(1) "Wastewater treatment tank" means a tank that is part of a wastewater treatment facility regulated under either Section 402 or 307(b) of the federal Clean Water Act and which receives and treats or stores an influent wastewater which contains regulated substances.

(2) "Workplan" means a written plan for corrective action, including, but not limited to, a scope of work, schedule for implementation, and description of qualifications of persons who will perform the work.

(3) "WQCC" means the New Mexico water quality control commission.

(4) "WQCC standards" means standards set forth in 20.6.4 NMAC, standards for interstate and intrastate streams, and 20.6.2 NMAC, ground and surface water protection.

X. Terms beginning with the letter "X". [RESERVED]

Y. Terms beginning with the letter "Y". [RESERVED]

Z. Terms beginning with the letter "Z". [RESERVED]

[20.5.1.7 NMAC - Rp, 20.5.1.7 NMAC, 6/15/2009; A, 03/17/2012]

20.5.1.8 SAVINGS CLAUSE: This rule shall not affect any administrative or judicial enforcement action pending on the effective date of 20.5.1 through 20.5.19 NMAC.

[20.5.1.8 NMAC - Rp, 20.5.1.8 NMAC, 6/15/2009; A, 03/17/2012]

20.5.1.9 COMPLIANCE WITH OTHER REGULATIONS: Compliance with 20.5 NMAC does not relieve a person of the obligation to comply with other applicable state and federal regulations.

[20.5.1.9 NMAC - Rp, 20.5.1.9 NMAC, 6/15/2009]

20.5.1.10 CONSTRUCTION: The petroleum storage tank regulations, 20.5 NMAC, shall be liberally construed to effectuate the purposes of the Hazardous Waste Act and the Ground Water Protection Act.

[20.5.1.10 NMAC - Rp, 20.5.1.10 NMAC, 6/15/2009]

20.5.1.11 SEVERABILITY: If any part, section or application of 20.5 NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[20.5.1.11 NMAC - Rp, 20.5.1.11 NMAC, 6/15/2009]

HISTORY OF 20.5.1 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, filed 3/15/88;

EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, filed 9/12/88;

EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, filed 2/14/89;

EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, filed 8/4/89;

EIB/USTR 11, Underground Storage Tank Regulations - Part XI - Miscellaneous, filed 9/12/88.

History of Repealed Material:

20 NMAC 5.1, Underground Storage Tanks - General Provisions (filed 10/6/95), repealed 2/2/00;

20.5.1 NMAC, Petroleum Storage Tank Regulations - General Provisions (filed 12/30/99), repealed 6/14/02;

20.5.1 NMAC, Petroleum Storage Tank Regulations - General Provisions, (filed 4/30/02), repealed 8/15/03.

20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, (filed 7/16/03), repealed 4/4/08.

20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, (filed 3/5/08), repealed 6/15/09.

Other History:

EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, filed 8/4/89 and EIB/USTR 11, Underground Storage Tank Regulations - Part XI - Miscellaneous (filed 9/12/88) both renumbered, reformatted and replaced by 20 NMAC 5.1, Underground Storage Tanks - General Provisions, effective 11/5/95;

20 NMAC 5.1, Underground Storage Tanks - General Provisions (filed 10/6/95), was replaced by 20 NMAC 5.1, Underground Storage Tanks - General Provisions, effective 2/2/00;

20 NMAC 5.1, Underground Storage Tanks - General Provisions (filed 12/30/99), was replaced by 20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, effective 6/14/02

20.5.1 NMAC, Petroleum Storage Tanks - General Provisions (filed 4/30/02), was replaced by 20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, effective 8/15/03.

20.5.1 NMAC, Petroleum Storage Tanks - General Provisions (filed 7/16/03), replaced by 20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, effective 4/4/08.

20.5.1 NMAC, Petroleum Storage Tanks - General Provisions (filed 3/5/08), replaced by 20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, effective 6/15/09.